

REMARKS

Claims 8, 11, 12 and 21-29 are pending in the application.

Claims 21 and 25-29 are allowed.

Claims 22-24 are rejected.

Claims 8, 11 and 12 are objected to.

Reconsideration of Claims 8, 11, 12 and 22-24 is respectfully requested.

I. **REJECTION UNDER 35 U.S.C. § 102**

Claims 22-24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kelly, et al. (US 4,862,496). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

With respect to independent Claim 22, Kelly fails to disclose “wherein if more than one gateway have the optimum metric with respect to the destination, the step of deterministically selecting a first gateway randomly selects the first gateway from among the gateways having the optimum metric.” Claim 22. The passage cited by the Office Action (Col. 8, lines 24-27) recites that the last used route (the first gateway) is used until the route becomes unavailable,

then a second route is selected based upon random, cyclically, or cost criteria. Col. 8, lines 14-31. Therefore, Kelly fails to disclose more than one “first gateway” having the optimum metric, and wherein deterministically selecting the first gateway randomly selects from among the gateways having the optimum metric. In other words, Kelly does not recite more than one “first gateway” having the optimum metric (i.e. two gateways having the optimum metric), and if so, then selecting the first gateway randomly from among those gateways.

With respect the independent Claims 22-24, the Office Action appears to be selecting individual elements/steps from different embodiments of Kelly. In general, the Office Action points to the embodiment in Kelly illustrated by Figure 1 (and Cols. 2 and 3) as disclosing Applicant’s elements/features of storing, deterministically selecting a first gateway, and sending a connection request. The Office Action further points to a second embodiment in Kelly illustrated by Figure 5 (and Col. 8) as disclosing the remaining elements/features. As discussed below, neither embodiment discloses each element/feature arranged as they are in the Applicant’s Claims 22-24.

First, Kelly’s embodiment of Figure 1 does not disclose deterministically selecting a first gateway having an optimum metric. Instead, Kelly starts with the first route that is the “direct route between the two nodes.” If the direct route is busy, then a second route is chosen based upon which of the alternative routes is the current nominated alternative route (which is normally the last used alternative route). Col. 2, lines 58-67. The second route is checked for availability, and if not available, the call is lost. The choice among the remaining alternative

routes (i.e., the replacement for the second route) may be made in accordance with any desired criteria. Col. 3 lines 29-48. Accordingly, Kelly's embodiment of Figure 1 does not (1) deterministically select the first gateway from an optimum metric (instead, Kelly uses the direct route for the first gateway), and (2) if a connection cannot be established to the first gateway, randomly select a second gateway (instead, Kelly simply uses the second route that is identified as the current alternative route – it is the third gateway of Kelly, not the second gateway, that appears to be chosen “by any desired criteria”).

Second, Kelly's embodiment of Figure 5 (“likened to the case illustrated in FIG. 1”) does not appear to deterministically determine a first gateway having an optimum metric. Instead, since there is no “direct route” as the first route, Kelly starts with the last used route through a particular gateway as the first route. If this first route is unavailable, then the choice among the remaining alternative routes (i.e., the replacement for the first route) may be made in accordance with any desired criteria (such as random, cyclically, cost criteria). Col. 8 lines 8-31. Accordingly, Kelly's embodiment of Figure 1 does not (1) deterministically select the first gateway from an optimum metric (instead, Kelly uses the “last used” route for the first gateway).

Since each element/feature of Applicant's claimed invention is not identically shown in Kelly, and arranged as they are in the Applicant's claims, Kelly fails to anticipate Claims 22-24.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 8, 11, 12 and 22-24.

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

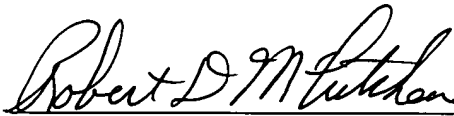
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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